

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARLENA COLVIN, ET AL.,

Plaintiff,

v.

UNITED STATES OF AMERICA, ET  
AL.,

Defendant.

No. 2:23-cv-01787-CKD

ORDER; FINDINGS AND  
RECOMMENDATIONS

This action was filed on August 22, 2023 and assigned to solely the undersigned pursuant to Appendix A of the Local Rules. (ECF Nos. 1, 3.) Plaintiffs were issued summons, an initial scheduling order, and a consent form. (ECF Nos. 1, 2, 3.)

Under the initial scheduling order, plaintiffs were required to serve defendant within 90 days, and by 10 days after, “file with the Clerk a certificate reflecting such service.” (ECF No. 3 at 2.) This is also required by Rule 4 of the Federal Rules of Civil Procedure:

If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m). On December 6, 2023, this court ordered plaintiff to file a statement with the court indicating the status of service. (ECF No. 4.) Plaintiff was cautioned that failure to

1 comply with the court's order within fourteen days would result in dismissal of plaintiff's case  
2 without prejudice. (Id.) The relevant deadlines have now passed, and plaintiff has not filed proof  
3 of service with the court or otherwise shown good cause for the lack of service.

4 If a defendant is not served by the deadline, the court—on motion or on its own after  
5 notice to the plaintiff—must dismiss the action without prejudice against that defendant or order  
6 that service be made within a specified time. Fed. R. Civ. P. 4(m). Here, the court has ordered  
7 plaintiff to show proof of service and plaintiff has failed to comply. Accordingly, the  
8 undersigned recommends that this action be dismissed without prejudice.

9 **ORDER**

- 10 1. The Clerk of Court is directed to randomly assign a district judge to this matter.


11 **FINDINGS AND RECOMMENDATIONS**

12 Further, IT IS HEREBY RECOMMENDED that

- 13 1. Plaintiffs' claims be DISMISSED WITHOUT PREJUDICE; and  
14 2. The Clerk of Court be directed to CLOSE this case; and

15 These findings and recommendations are submitted to the United States District Judge  
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)  
17 days after being served with these findings and recommendations, plaintiffs may file written  
18 objections with the court. Such a document should be captioned "Objections to Magistrate  
19 Judge's Findings and Recommendations." Plaintiffs are advised that failure to file objections  
20 within the specified time may waive the right to appeal the District Court's order. Turner v.  
21 Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir.  
22 1991).

23 Dated: January 30, 2024

24   
25 CAROLYN K. DELANEY  
26 UNITED STATES MAGISTRATE JUDGE